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Dated: November 6, 2007

Signature:

(Stephen J. Brown)

Docket No.: LOREAL 3.0-038
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Shao Xiang Lu

Application No.: 10/816,574

Group Art Unit: 1616

Filed: April 1, 2004

Examiner: A. Soroush

For: COSMETIC COMPOSITIONS CONTAINING
SWELLED SILICONE ELASTOMER
POWDERS AND GELLED BLOCK
COPOLYMERS

RESPONSE TO REQUIREMENT FOR ELECTION OF SPECIES

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This communication is in response to the Office Action mailed October 3, 2007, setting forth a Requirement for Election of Species in the above-identified application.

In response, the Applicant elects styrene-ethylenebutylene-styrene as a gelled block copolymer, an unfunctionalized silicone elastomer core as a silicone elastomer core, and dimethicone as a swelling agent. Claims 1-4, 6, 12, 15, 20-29, 31, 35, and 39-64 read on the elected species.

This election of species is made with traverse. A requirement to elect a species is proper only if there would be a serious burden on the Examiner absent such election. The Office Action, however, is completely devoid of any evidence or reasoning demonstrating that the examination of the claims, without election, would present a serious burden to the Examiner.

To establish the existence of such burden, the Examiner "must show by appropriate explanation ... (A) Separate classification thereof ... (B) A separate status in the art when they are classifiable together [or] ... (C) A different field of search." MPEP § 808.02 (Rev. 5, August 2006, p. 800-53). The Office Action fails to even assert that the species identified by the Examiner would require searches in different subclasses, much less different classes, or a different field of search. Moreover, a review of recently issued U.S. patents directed to cosmetics shows that searches typically involve multiple classes or multiple subclasses in a given class. Moreover, the claimed invention is not directed to a gelled block copolymer, *per se*, or to a silicone elastomer core, *per se*, or to a swelling agent, *per se*. So the fact that the "species ... are structurally distinct" is irrelevant.

Accordingly, there is no explanation on the record why the searches for these embodiments and ensuing patentability determinations would be a serious burden on the office, as required. For this reason alone, the requirement for election of species should be withdrawn.

In the event any fee is due in connection with the present response, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: November 6, 2007

Respectfully submitted,

By 

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